IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Kulwant Rai APPELLANT

VERSUS

The State of Punjab RESPONDENT

CORAM : HON'BLE MR.JUSTICE MEHTAB S.GILL

Present:- Mr.H.S.Gill, Senior Advocate with Mr.Dharminder Sharma, Advocate for the petitioner.

Mr.D.K.Mittal, D.A.G. Punjab.

MEHTAB S.GILL, J.

This is a revision against the judgment/order dated 8.1.1991 of the Chief Judicial Magistrate, Faridkot whereby petitioner Kulwant Rai was convicted under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") and sentenced to undergo RI for six months and to pay a fine of Rs.1,000/-, in default of payment of fine, to further undergo RI

for three months and order dated 1.12.1992 passed by the Additional Sessions Judge, Faridkot by which the appeal was dismissed.

The case of the prosecution is that Dr.C.S.Brar accompanied by Dr.Tejinder Kumar Gupta intercepted the petitioner carrying about 60 kgs. of cow milk for sale contained in two drums on a cycle. Dr.C.S.Brar disclosed his identity. Samples of cow milk were taken. Notice on Form VI Ex.PA was served upon the petitioner who signed it. It was attested by Dr.C.S.Brar. Contents of one drum were made homogeneous by stirring and milk weighing 750 grams was purchased on payment of Rs.3/- vide receipt Ex.PB. The purchased milk was divided into three equal parts and put into three dry and clean bottles. 20 drops of 40% formalin were added as preservative into each sample bottle. Seal "BRA" was put on the bottles. Copy of Form VII was sent to the Public Analyst, Jalandhar through Bhagwan Dass, a Class IV employee of the office of Civil Surgeon, Faridkot. Another copy of Form VII bearing the seal was sent for comparison. The remaining two samples were deposited with the Local Health Authority, Faridkot. The public Analyst Report Ex.PE was received and the sample was found to be adulterated as MSNF was found to be 7.8%. MSNF was different by 8% of minimum prescribed standard. A copy of the report Ex.PE was sent to the petitioner vide Ex.PJ and thereafter the complaint Ex.PF was field.

The prosecution to prove its, case brought into the witness-box Dr.Sham Lal Sharma PW-1 and Parveen Kumar PW-2.

Learned counsel for the petitioner has stated that the Food Inspector did not follow the mandatory provisions of Section 10(7) of the Act. No independent witness was joined. The milk was being taken by the petitioner for a

religious ceremony (Path) of his father and was not being taken for being sold.

Learned counsel for the State has rebutted these arguments of the counsel for the petitioner and stated that case of the petitioner stands convincingly proved.

I have heard the learned counsel for the parties and perused the record with their assistance.

In the instant case, the Food Inspector in cross-examination stated, that milk was made homogeneous by stirring it with the measure available with him and further that in the complaint it was mentioned that milk was stirred but it was not mentioned that it was stirred with a measure. Obviously, when quantity of milk in a drum is large, it is not possible to make the milk homogeneous with a measure because the same cannot reach the bottom of the drum containing about 30 kgs. of milk. It was due to this failure to make the milk homogeneous that the fat was found to be in excess, the sample having been taken from the upper layer while MSNF settled at the bottom and therefore its ingredients are less.

The said point has come up for consideration in large number of judgments before this Court. In the case of Sarwan Singh v. State of Haryana 1997(3) R.C.R. 546, the sample of milk on analysis was found to contain fat in excess i.e. 5.7% against prescribed standard of 4% while MSNF was 7.5% instead of 8.5%. This Court held that milk was being carried in big drums and unless it is stirred properly clockwise and anti-clockwise and made homogeneous, it cannot be said that it was representative sample. In the said case also, the Food Inspector stated in his cross-examination, that he stirred the milk with a measure. In the said case, the revision petition was allowed and the accused was acquitted.

In another case Devi Dayal v. State of Haryana 1999(3) R.C.R.16, this Court held that where sample of milk contained more fats but less solids, it cannot be said that water had been added and that deficiency might be due to non-stirring and non homogeneousing of milk before the sample was drawn. Reliance in the said case was also placed on a Division Bench judgment in the case of State of Punjab v. Paramjit Singh 1992 Criminal Law Times 234.

In another case Hans Raj v. State of Haryana 2000(1) R.C.R. 743, the presence of higher percentage of milk fat contained in the milk and little deficiency in milk solids not fat showed that there was no addition of water to the milk. In case water is added, then both the milk fat and MSNF will be less.

Similar view was taken in Lekh Raj v. U.T. Chandigarh 1990(1) R.C.R. 479.

In the case in hand, there is no independent witness to show that there was proper stirring of the milk. No witness from the public was associated and no plausible explanation was given by the Food Inspector in this regard.

Revision petition is allowed. Petitioner is acquitted of the charge framed against him.

(MEHTAB S.GILL)
JUDGE

July 6, 2007
GD

WHETHER TO BE REFERRED TO REPORTER? YES/NO